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Nos. 81-150, 81-546

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NORTHERN PIPELINE CONSTRUCTION CO.,
Appellant,

vs.

MARATHON PIPE LINE COMPANY and
UNITED STATES OF AMERICA.
Appellees,

UNITED STATES OF AMERICA,
Appellant,

vs.

MARATHON PIPE LINE COMPANY and
NORTHERN PIPELINE CONSTRUCTION CO.
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MOTION TO AFFIRM

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
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MOTION TO AFFIRM

Opinions Below

The order and memorandum of the District Court are reported at 12 Bank.Reptr. 946, and appear as Appendix B to the Government's Jurisdictional Statement (p. la-26a). The opinion of the Bankruptcy Court (Gov't. J.S.App.C., 27a-36a) is reported at 6 Bank.Rptr. 928.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Article I, Section 8, Clause 4 of the United States Constitution provides:

> The Congress shall have Power . . .
>
> To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

2. Article III, Section 1 of the United States Constitution provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their services, a Compensation, which shall not be diminished during their Continuance in Office.

3. Article III, Section 2, Clause 1 of the United States Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases

affecting Ambassadors, other public Ministers and Consuls;—to all cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between citizens of the same State claiming Lands under Grants of different States. and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Bankruptcy Reform Act of 1978, Pub. L. 95-598, Title II, §201-252, and Title IV, §401-411, 92 Stat. 2657-2673, 2682-2688, are reproduced in the Appendix, *infra*, 1a-15a.

STATEMENT

1. These are direct appeals, pursuant to 28 U.S.C. §1252, from a decision of the United States District Court for the District of Minnesota dismissing an adversary proceeding instituted in the United States Bankruptcy Court for the District of Minnesota by Northern Pipeline Construction Company (hereinafter "Northern") against Marathon Pipe Line Company (hereinafter "Marathon") on the ground that the delegation of expanded jurisdiction over plenary matters to non-tenured bankruptcy judges pursuant to 28 U.S.C. §1471, violates Article III of the United States Constitution.

On March 8, 1979, Northern instituted a lawsuit against appellee, Marathon, under 28 U.S.C. §1332, in the United States District Court for the Western District of Kentucky for claims arising out of a contract between

the parties involving construction of a pipeline in Kentucky. On January 14, 1980, Northern filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, District of Minnesota. Several months after petitioning for reorganization, Northern attempted to initiate an adversary proceeding under the Bankruptcy Code by filing and serving a Complaint against Marathon asserting the same contract claims asserted in the lawsuit then pending in the Western District of Kentucky, with the exception of a claim for mechanic's lien relief. Marathon moved the Bankruptcy Court for dismissal of Northern's Complaint for lack of jurisdiction. The Bankruptcy Court denied the motion and Marathon appealed to the District Court pursuant to Reform Act, Title IV, Section 404(c). On April 23, 1981, the District Court entered an order dismissing Northern's adversary proceeding against Marathon because "the delegation of authority in 28 U.S.C. §1471 to the Bankruptcy Judges to try cases which are otherwise relegated under the Constitution to Article III Judges is an unconstitutional delegation of authority." *Marathon Pipe Line Company v. Northern Pipeline Construction Co.*, 12 Bank.Rptr. 946, 947 (D. Minn. 1981) (Gov't.J.S.App. 1a-2a). Both the United States, which had intervened because of the challenge to the constitutionality of a federal statute, and Northern filed notices of appeal to this Court. Northern docketed its appeal, No. 81-150, on July 17, 1981. The United States' appeal, No. 81-546, was docketed on September 16, 1981, and its Jurisdictional Statement was received by Marathon's counsel on September 18, 1981.

2. In enacting the Bankruptcy Reform Act of 1978 (hereinafter "Reform Act"), Congress radically altered

the judicial administration of bankruptcy in the United States. Prior to the enactment of the Reform Act, jurisdiction over bankruptcies was vested in and exercised by the United States district courts (former 11 U.S.C. §1(10)). Under the former Bankruptcy Act, a party like Marathon who was sued in federal court by a bankrupt's trustee in a plenary proceeding had a vested right at all times to have the case tried before an Article III judge. Former 11 U.S.C. §46. Although the old Bankruptcy Act provided that summary proceedings involving a bankrupt's property in actual or constructive possession of the court could be handled by bankruptcy referees, jurisdiction even in these matters was at all times vested in the district court which retained control of all proceedings. Referees were granted limited powers "subject always to review" by an Article III district judge. Former 11 U.S.C. §66.[1] More importantly, the district judge could, "at any time for the convenience of parties or other cause," withdraw a case in whole or in part from a referee and either act himself or assign the case, or part thereof, to another referee in the district. Bankruptcy Rule 102(b).

The Reform Act creates new independent bankruptcy courts of record, the "United States Bankruptcy Court for the district." (hereinafter "Bankruptcy Court[s]"), 28 U.S.C. §151(a); Reform Act Title II, §213, 92 Stat. 2661 [to be codified at 28 U.S.C. §451]. Pursuant to Section 241(a) of the Reform Act, original and exclusive jurisdiction of all cases under Title 11 of the United States Code

[1]Bankruptcy General Order 47 allowed the district court judge on review to re-examine the record and take additional evidence. In 1973, General Order 47 was superseded by Rules 810 and 752 of the Rules of Bankruptcy Procedure, which provided for a "clearly erroneous" standard of appellate review.

and original but not exclusive jurisdiction of "all civil proceedings arising under title 11 or arising in or related to cases under title 11" is conferred initially upon the district courts, 28 U.S.C. §1471 (a)(b), but then is removed completely and transferred to the new Bankruptcy Courts. 28 U.S.C. §1471(c). Since the district courts are divested of all of the bankruptcy jurisdiction conferred on them, district court judges may no longer withdraw a case in whole or in part from non-Article III bankruptcy judges.

The Bankruptcy Courts will come into existence on April 1, 1984. The existing "courts of bankruptcy" are continued during the "transition period" from October 1, 1979 to April 1, 1984, but the bankruptcy referees appointed prior to the effective date of the Reform Act are fully empowered to act as bankruptcy judges and to exercise all powers and jurisdiction which Congress purportedly conferred on the Bankruptcy Courts under the Reform Act. Reform Act, Title IV, §§404, 405, 92 Stat. 2683, 2684, Contrary to Article III judges, referees, whom the Reform Act styles "Bankruptcy Judges," were appointed by the respective district courts for a term of six years (former 11 U.S.C. §§61, 62). Referees' compensation is indexed to the Federal Salary Act, (2 U.S.C. §§351-361) which allows for diminution. Former 11 U.S.C. §68; Reform Act, Title IV §§404(d), 92 Stat. 2684. Rather than being subject to the impeachment process afforded judicial officers under the Constitution, bankruptcy "judges" may be removed throughout the transition period by the district courts "for incompetency, misconduct, or neglect of duty." Former 11 U.S.C. §62; Title IV, § 404(d), 92 Stat. 2684. In addition, referees may be removed during the transition period at the end of their six year appointed term if found

"not qualified" by the Chief Judge of the respective circuit in which they preside after consultation with a panel composed of representatives of the state and local bar associations and local law school. Reform Act, Title IV §404(b), 92 Stat. 2683.

Beginning in 1984, bankruptcy judges are to be appointed by the President, with the advice and consent of the Senate, for a term of fourteen years. 28 U.S.C. §§152, 153. As in the case of the interim "judges", bankruptcy judges' salaries will be subject to review, including diminution under the Federal Salary Act pursuant to 28 U.S.C. §154, and they will be subject to removal by the judicial councils of their respective circuits for incompetency, misconduct, neglect of duty or physical or mental disability. 28 U.S.C. §153(b).

The Reform Act purports to invest the non-Article III judges of the Bankruptcy Courts, including referees during the transition period, with "the powers of a court of equity, law and admiralty." 28 U.S.C. §1481. The bankruptcy judges are explicitly given the power to issue all writs necessary in aid of the Bankruptcy Court's expanded jurisdiction, 28 U.S.C. §1651; to hold jury trials, 28 U.S.C. §1480; issues writs of habeas corpus, 28 U.S.C. §2256; and, issue any order, process or judgment that is necessary or appropriate to carry out the provisions of Title 11. 11 U.S.C. §105(a).

The Reform Act also provides that initial appeals from decisions of the Bankruptcy Courts will be to panels of three non-Article III bankruptcy judges appointed by the Chief Judge of the respective circuit. 28 U.S.C. §160. If no such appeals panel is designated, the district court shall exercise this appellate jurisdiction. 28 U.S.C. §1334.

The court of appeals is given jurisdiction of appeals from the appellate panels and the district court. 28 U.S.C. §1293 (a). If the parties agree, a direct appeal to the court of appeals may be taken from a final judgment of a Bankruptcy Court. 28 U.S.C. §1293(b). During the transition period, in additon to the above-described methods, parties may appeal to the district court for the district in which the bankruptcy judge presides. Reform Act, Title IV, §405(c)(1)(C), 92 Stat. 2685.

Simultaneously with the removal of bankruptcy matters from the control of an Article III judge, the scope of jurisdiction of the Bankruptcy Court is greatly expanded. Bankruptcy Courts now have jurisdiction not only over all cases under Title 11, but over "all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. 1471(b). In some respects, Bankruptcy Courts, acting through non-Article III judges, are given even greater jurisdiction than that exercised by the district courts, inasmuch as Bankruptcy Courts are granted jurisdiction over any civil proceeding "related to" a case under Title 11. Bankruptcy Courts may also exercise a non-reviewable right to remove any action "arising in or related to a case under title 11" from any state or federal court. 28 U.S.C. §1478.

ARGUMENT

1. Pursuant to Rule 16 of the Rules of this Court, Appellee Marathon moves to affirm the judgment below on the ground that the District's Court's decision is so eminently correct as to warrant summary affirmance by this Court. In dismissing Northern's adversary proceeding on the ground that the attempted exercise of jurisdiction

pursuant to 28 U.S.C. §1471(b) by non-tenured bankruptcy judges violates Article III, the District Court properly applied the long established rule that a jurisdiction repugnant to the Constitution cannot be exercised by the federal courts. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803); *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792).

Article III of the United States Constitution requires that all judges of such inferior courts as Congress may establish "shall hold their Offices during good Behavior and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." Article III does not require Congress to create inferior courts, but it does require that when Congress creates an inferior court vested with "the judicial Power of the Unted States", it must comply with the tenure and compensation requirements of Article III. The fundamental and inviolable nature of Article III's tenure and compensation guarantees, which form the cornerstone of the independence of the judicial branch of the federal government, has been repeatedly emphasized in decisions of this Court. *See, e.g., United States v. Will*, 449 U.S. 200, 66 L.Ed.2d 392, 101 S.Ct. 471 (1980); *O'Donoghue v. United States*, 289 U.S. 516, 529-534 (1933); *Evans v. Gore*, 253 U.S. 245 (1920). *See generally, The Federalist*, Nos. 78 and 79.

2. The Reform Act creates a new inferior federal court and confers on it, with two insignificant exceptions,* the full panoply of "powers of a court of equity, law, and admiralty . . ." 28 U.S.C. §1481. In creating this full scale

*The Bankruptcy Court may not enjoin another court or punish a criminal contempt not committed in the judge's presence or warranting a punishment of imprisonment. 28 U.S.C. §1481.

court, Congress failed, however, to provide the tenure and salary protections that Article III requires for all judges of inferior federal courts who exercise "the judicial Power of the United States." The "judicial Power of the United States" extends to "all cases . . . arising under . . . the laws of the United States." Article III, §2. Since the bankruptcy laws are clearly "laws of the United States," *National Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 610, 652 n. 3, 69 S.Ct. 1173, 1187, 1198 n. 3 (1949); *Mitchell v. Great Works Milling and Mfg. Co.*, 17 F. Cas. 497, 499 (C.C.D. Me. 1843) (Story, J.), Article III of the Constitution requires that Bankruptcy Court judges must be guaranteed life tenure and an undiminished salary. The District Court correctly concluded that the provision for non-Article III judges in the new Bankruptcy Courts satisfies neither the explicit requirements nor the underlying policies of Article III. *Accord*, Note, *Article III Limits on Article I Courts; The Constitutionality of the Bankruptcy Court and the 1979 Magistrate Act*, 80 Colum.L.Rev. 560 (1980).

3. As noted by the Court below, "the affairs of insolvent men are no less diverse than the affairs of men of more substantial means." *Marathon, supra* at 954 (Gov't. J.S.App. 20a). Testimony before the House Subcommittee documents that under the Reform Act, bankruptcy judges will handle every type of civil lawsuit, including antitrust, securities, labor law, discrimination, tax, and personal injury litigation, class action litigation, and corporate reorganizations in which they must resolve disputes arising from the entire breadth of a corporation's affairs and enter final judgments which directly affect not only many in-

dividuals and corporations but whole communities. Bankruptcy Court Revision: Hearings on H.R. 8200 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 95th Cong., 1st Sess. 18-27 (1977) (Statement of J. Stanley Shaw). The Framers' concern that periodic terms and diminishable salary for federal judges could lead to "improper complaisance to" the executive or legislative branches or to "too great a disposition to consult popularity," *The Federalist*, No. 78, at 14, is fully applicable to "judges" exercising the expanded jurisdiction and powers of the Bankruptcy Court. As a matter of constitutional principle and as a practical matter, the independence of those federal judges who apply state, federal and constitutional law in cases and controversies related to bankruptcy proceedings is as important as the independence of any other federal judge. The House Subcommittee responsible for reporting out the bankruptcy reform bill came to the same conclusion:

> "In sum, the Constitution suggests that an independent Bankruptcy Court must be created under Article III. Article III is the constitutional norm, and the limited circumstances in which the courts have permitted departure from the requirements of Article III are not present in the bankruptcy context. Even if they were present, the text of the Constitution and the case law indicate that a court created without regard to Article III most likely could not exercise the power needed by a Bankruptcy Court to carry out its proper functions. In view of Congress' independent obligation, and the Congressional oath, to support the Constitution, the decision on this issue should not simply be thrown to the courts. Congress should establish the proposed Bankruptcy Court under Article III, with all of the protection that the

> Framers intended for an indepede it judiciary." Report Of The House Subcommittee On Civil And Constitutional Rights For The Committee Of The Judiciary, H.R. Rep. No. 95-595, 95th Cong. 1st Sess., at 33, *reprinted in* [1978] U.S. Code Cong. & Ad. News 5968 at 6000.

4. The constitutional right of a defendant sued by a bankrupt's trustee in federal court to a proceeding before an Article III judge was recognized both in the Bankruptcy Act of 1867, Act of March 2, 1867, §2, 14 Stat. 517, 518, c. 176, and the Bankruptcy Act of 1898, Act of July 1, 1898, § 23, 30 Stat. 552, c. 541 (former 11 U.S.C. §46 (b)). The Government's argument (Gov't. J.S. 10) that Article III is not violated by the creation of the new Bankruptcy Courts because plenary suits brought by a trustee (and cases asserting federally created rights) may be heard before non-tenured state court judges misapprehends the federalist structure of the United States Constitution. Mindful of King George's abuse of judicial power in the colonies, the original states in creating a federal government deemed the tenure and compensation guarantees of Article III necessary protection against such potential abuse by the federal government. The same principle is not, however, applicable to the states, since they were independently sovereign when created. Therefore, Article III, Section 1, does not, and was not intended to impose conditions on the exercise of the judicial power of the states. The Constitution does, however, guarantee an Article III judge to a litigant whose rights are to be determined in a federal court exercising the judicial power of the United States. It is precisely this constitutional right, long recognized and well established, that has been violated by enactment of the Reform Act.

5. The District Court fully reviewed and correctly rejected appellants' alternative arguments that the new Bankruptcy Court does in fact meet the requirements of Article III, or that the Bankruptcy Courts may stand as legislative or Article I courts. The Government suggests Article III problems are avoided because the courts are termed an "adjunct to" the district courts and because litigants are afforded appellate review by Article III judges. (Gov't J.S. 9). While the Bankruptcy Courts are styled "adjuncts", they do in fact operate independently of the district court and control their own dockets, 28 U.S.C. §§156, 157. Under the Reform Act, the district courts are initially vested with bankruptcy and related matter jurisdiction, 28 U.S.C. §1471(a)(b), but then are immediately divested of all such jurisdiction. 28 U.S.C. §1471(c). The Reform Act provides that "*all* of the jurisidction conferred by this section on the district courts," 28 U.S.C. §1471(c) (emphasis added), shall be exercised by the non-Article III bankruptcy judges. This statutory slight-of-hand does not save the constitutional infirmity of an untenured federal court. 2 *Collier on Bankruptcy* ¶2.01 [c] at 2-29 (15th ed.1981).

The Government also suggests that the existence of appellate review by Article III judges satisfies the requirements of Article III. (Gov't. J.S. 10). This argument implies that the tenure and salary provisions of Article III apply only to appellate judges, a suggestion completely unwarranted by the explicit language of Article III which encompasses every inferior federal court established by Congress. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 534 (1962), (no suggestion that appellate review would cure a judgment voided by an Article I judge's sitting in a

proceeding before an Article III court.) Indeed last Term, this Court in *United States v. Raddatz*, 447 U.S. 667, 65 L.Ed.2d 424 (1980) set narrow limits on the permissible delegation of functions from an Article III court to a non-Article III official. In a 5 to 4 decision, this Court held Article III requirements satisfied only where "the entire process takes place under the district court's total control and jurisdiction." 65 L.Ed.2d at 437. This Court did not rely on the existence of Article III appellate review, but on the fact that the district court judge had complete control in referring the matter to a magistrate. and that he could freely reject the magistrate's recommendation, rehear evidence in whole or in part, call for additional findings and exercise the ultimate authority in issuing an order. Both *Glidden* and *Raddatz* directly refute the Government's suggestion that mere appellate review by Article III judges satisfies the requirements of Article III.

Similarly, the constitutionality of the new Bankruptcy Courts cannot be sustained by terming them legislative or Article I courts. The authorities relied upon by the Government for this proposition reveal only that Congress may create Article I courts for specialized geographic areas in which it possesses local governmental powers and within the United States for specialized subject matters arising between the federal government and others. This Court has held that Article III restraints placed upon the federal government acting in the states do not apply in those special geographic areas in which the federal government exercises powers of a local government. *Palmore v. United States*, 411 U.S. 389 (1973); *Kendall v. United States*, 37 U.S. (12 Pet.) 524, 619 (1838); *The American Insurance Co. v. 356 Bales of Cotton (Canter)*, 26 U.S. (1 Pet.) 511

(1828). The principle enunciated by the Court in these cases directly undercuts appellants' argument that Congress may create a non-Article III federal tribunal which can exercise the powers of a court of law, equity and admiralty. In this Court's first discussion of the distinction between Article III (constitutional) courts and Article I (legislative) courts, Chief Justice Marshall stated that "admiralty jurisdiction can be exercised *in the states* in those courts *only* which are established in pursuance of the third article of the Constitution. . . ." *Canter, supra* at 546 (emphasis added). The Reform Act, however, explicitly authorizes non-Article III federal bankruptcy judges to sit as a court of admiralty, as well as a court of law and equity. 28 U.S.C. §1481.

The rationale found in the other Article I court cases cited by the Government is also inapplicable in that those cases involved specialized tribunals adjudicating matters arising between the government and others, which, if Congress so chose, are capable of purely executive or legislative determination: claims against the government, *Williams v. United States,* 289 U.S. 553 (1933); customs claims, *Ex Parte Bakelite Corp.,* 279 U.S. 438 (1929);[3] land claims, *United States v. Coe,* 155 U.S. 76 (1894); tax collection, *Burns, Stix Friedman & Co. Inc. v. Commissioner,* 57 T.C. 392 (1971);[4] and military disciplinary mat-

[3]The Court of Claims and Court of Customs and Patent Appeals were held subsequently to be Article III courts. *Glidden v. Zdanok,* 370 U.S. 530 (1962).

[4]The constitutionality of the Tax Court has never been addressed by this Court. The Tax Court upheld its own status noting that it, unlike the new Bankruptcy Court, cannot enter binding money judgments and has no jurisdiction to execute its decisions. *Burns, Stix Friedman & Co. v. Comm'r.,* 57 T.C. 392, 396 (1971).

ters, *Dynes v. Hoover*, 61 U.S. (20 How.) 65 (1858).* These cases were premised upon the right of the sovereign to use summary legislative or executive action to collect taxes and duties, to settle claims against the sovereign, and to discipline the military. At no time in this country's history, however, have lawsuits initiated by trustees on behalf of bankrupts against other parties been considered amenable to executive or legislative determination. *See*, Katz, *Federal Legislative Courts*, 43 Harv. L.Rev. 894, 916 (1930). None of the Article I legislative court cases support the withdrawal of Article III protection from the resolution of private disputes under state, federal and constitutional law by federal courts operating within the geographical limits of the various states.

Finally, the Government's reliance upon *Palmore v. United States*, 411 U.S. 389 (1973), for the supposed constitutional principle of efficiency and convenience of judicial administration is wholly without merit. The Government suggests that this Court upheld the establishment of local courts for the District of Columbia without life tenure because of the need "to relieve the regular Art. III courts . . . from the smothering responsibility for [a] great mass of litigation." Gov't J.S. at 12, quoting *Palmore, supra*, at 408-409. *Palmore* did not uphold the establishment of local Article I courts on the grounds that they were more convenient, but rather on the ground that Congress was acting within its sovereign power as the local government for the District of Columbia. 411 U.S. at

*The legislative and executive power over military discipline has been carefully limited by this Court to "the least possible power adequate to the end proposed." *Toth v. Quarles*, 350 U.S. 11, 23, 100 L.Ed. 8, 17 (1955); *O'Callahan v. Parker*, 395 U.S. 258, 23 L.Ed.2d 291 (1969); *Ex Parte Milligan*, 71 U.S. (4 Wall) 2, 18 L.Ed. 281 (1866).

397. Nor is Appellee aware of any decision of this Court holding that the Article III constitutional guarantees intended to uphold the independence of federal courts. whether they be federal Bankruptcy Courts, district courts or courts of appeal, can be sacrificed on the altar of convenience or efficiency.

6. Fully mindful that Congressional reform of the bankruptcy court system sought to establish an independent court, the District Court below astutely observed:

> "One wonders, however, what measure of independence is gained through a court system that calls for its judges to sit for a limited number of years constantly under the threat of removal from office by a majority vote of their judicial brethren and open to possible retaliation in the form of salary cuts from Congress. Indeed, vesting such a precariously situated court with nearly the full panoply of district court jurisdiction and power effectively denies every litigant tangentially connected with a bankruptcy an independent and impartial forum in which to have his dispute resolved, regardless of the nature of his dispute. In turn, as a significant number of cases and controversies are removed from the sphere of Article III court determination, upon the theory that Congress has the authority to legislate in a certain subject area, the independence of the entire judicial branch is compromised. For the bankruptcy power is no different in this respect then the power to regulate commerce or any other source of national legislation. See H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 86 (1977) (letter of Herbert Wechsler).
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> * * *
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> The creation of a court system vested with broad federal question jurisdiction without the guarantees

of life tenure and undiminishable salary disrupts the delicate balance of power in our federal system giving rise to the possibility of a lessening of our personal freedoms." *Marathon, supra* at 956. (Gov't. J.S.App. 24a-26a)

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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